APPENDIX C

RESPONSE TO COMMENTS ON SPECIFIC CONDITIONS

In addition to the general comments on the proposed merger conditions that are addressed in the text of the reply, a number of parties want either specific revisions to the conditions that Bell Atlantic and GTE have proposed on their merger or, in a few cases, additional merger conditions. In most respects, the conditions proposed here merely mimic those which the Commission reviewed and approved in connection with the SBC/Ameritech merger. *See Ameritech Corp. and SBC Communications, Inc.*, 14 FCC Rcd 14712 (1999) ("SBC/Ameritech"). There, the Commission concluded that that merger raised significant competitive concerns which are not present here. As a result, if anything, the Bell Atlantic/GTE merger should be approved with fewer conditions than SBC/Ameritech, not the additional straitjackets that some parties want to impose. And many of the commenters' arguments here are no different from those the Commission previously rejected. Others, such as those supporting additional conditions, have no relevance whatever to this merger and should be rejected. As shown below, there is no justification for adopting the suggested changes and new requirements, and the conditions should be approved as proposed.

Specific Conditions

I. Separate Affiliate for Advanced Services[1]

Adequacy of Separate Affiliate Provisions

One carrier, Covad, argues generally that the separate affiliate provisions, like those for SBC/Ameritech, are inadequate to meet the parameters for such separation that the Commission

[1] Roman numeral references are to the number of the condition as filed in Bell Atlantic/GTE's Supplemental Filing. Conditions not dealt with here are those to which commenters did not seek modification.

had previously adopted. Covad at 7-14. It asks instead that the Commission require Bell Atlantic/GTE to divest ownership of its advanced services and offer retail services through an entity that is unaffiliated with its wholesale operations. *Id*.

Response: Covad's broadside attack simply repeats positions that the Commission has already reviewed and flatly rejected. In SBC/Ameritech, it addressed comparable conditions to those proposed here and found that their approval will further the goals of

1) promoting advanced services deployment;
2) ensuring that in-region local markets are more open;
3) fostering out-of-region competition;
4) improving residential phone service; and
5) enforcing the Merger Order.

SBC/Ameritech at & 5.

The Commission also found that adoption of the conditions "will result in affirmative public benefit [and] ... will serve the public interest, convenience and necessity." *Id*. at & 419. With specific reference to the separate affiliate provision, the Commission found that its adoption in largely the same form as Bell Atlantic and GTE propose "will greatly accelerate competition in the advanced services market," *id*. at & 363, and that "it will spur the deployment of advanced services by all entities." *Id*. at & 444. Therefore, contrary to Covad's bald claims, the separate affiliate condition is fully consistent with the Commission's competitive policies for provision of advanced services.

Moreover, the condition will absolutely guarantee that, after a brief transition period, the separate affiliate will operate at arm's length from the incumbent local exchange carrier, which will be required to treat the affiliate in the same, non-discriminatory manner as it treats non-affiliated providers of advanced services (with the limited exceptions that the Commission reviewed and approved for SBC/Ameritech). *See*, for example, proposed conditions && 3c and 4a(4) (telephone company may provide OI&M to affiliate on a non-discriminatory basis), 4a(5)

(telephone company may install advanced services equipment for affiliate and competitors on a non-discriminatory basis), 4a(6) & (7) (provision of UNEs on a non-discriminatory basis), 4g (connecting and testing network components provided on a non-discriminatory basis), 4h (installing and testing CPE), 4j (receipt and isolation of troubles), and 4k (repair of troubles). Likewise, the merger conditions specify that the separate affiliate must use the same interfaces, processes and data as are available to non-affiliates (*see, e.g.*, && 4b(5) and 4f). It is therefore apparent that Covad is simply ignoring the detailed separation conditions in its zeal to press for divestiture, and the Commission should disregard its comments.

Affiliate As "Successor or Assign;" Unbundling Obligations

Some parties argue that the Commission should not definitively determine whether the affiliate is a successor or assign of a Bell operating company or incumbent exchange carrier until it reviews the affiliate's actual operations. Covad at 12, MCI WorldCom ("MCI") at 9-10. MCI also argues that, once the separate affiliate provides advanced services, that affiliate should assume all of the telephone company's section 251 obligations for those services, including the obligation to unbundle and to allow competitors the right to pick and choose terms and conditions pursuant to section 252(i) of the Act and to make its services available for discounted resale. Similarly, MCI claims that, if the telephone company transfers a facility through which it provides a UNE, the UNE obligations transfer as well. MCI at 8-9.

Response: No party makes any attempt to show any reason why the advanced services affiliate would be a successor or assign of the telephone companies – the commenters simply want the Commission to delay making a firm decision.[2] But there is no question that the Commission has the right and obligation to interpret the Communications Act and issue decisions consistent with that interpretation. *See, e.g., AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999). Nor is there any legal or policy reason why the Commission cannot or should not review the proposed merger conditions and determine definitively that, if those conditions are

[2] In the case of SBC/Ameritech, the Commission adopted only a "rebuttable presumption" that the affiliate would not be a successor or assign. SBC/Ameritech at & 458.

met, the separate affiliate would not be a successor or assign under the Act. Making that decision at this early stage will eliminate potential areas of future litigation and controversy.

That decision can be made based on the express language of the Act. The resale and unbundling obligations in section 251(c) apply only to "incumbent local exchange carriers." These are defined in 251(h) as the local exchange carrier that provided telephone exchange service in an area on the date of enactment *and* was a member of the exchange carrier association under 47 C.F.R. ə 69.601(b) *or* is a successor or assign of such carrier. Here, the same Bell Atlantic and GTE local operating telephone companies will continue to provide local exchange services in the same areas after the merger, and they will continue to provide unbundled loops and other network elements that must be provided on an unbundled basis. Only advanced services, which are now in the process of being deployed for the first time, will be provided by the separate affiliate, not the traditional local exchange telephone services offered historically by the local operating companies. And the advanced services affiliate will not participate in the exchange carrier association, as specified in section 69.601(b) of the Commission's rules. Therefore, the Commission can and should make a definitive finding now that the separate affiliate, if operated as set out in the proposed conditions, will not be an incumbent local exchange carrier or successor or assign, and therefore will not be subject to the requirements of section 251(c) of the Act. Instead, it will be treated as a non-dominant provider of advanced services and regulated in the same way as any other competitive provider of advanced services.

The very reason the advanced services affiliate is being proposed here is to ensure that the Bell Atlantic/GTE telephone companies treat their advanced services operations in the same manner as they treat non-affiliated providers of advanced services. If the separate affiliate were made subject to the same regulatory requirements as the telephone company, it would be unable

to compete effectively. It alone among the range of competitors would be subject to those requirements. As a result, there would be no reason to establish such an affiliate. Moreover, the advanced services affiliate does not itself control any arguably essential facilities (such as loops) that would warrant dominant carrier regulation.

If, on the other hand, the separate affiliate were saddled with regulations that would prevent it from competing effectively in the marketplace, that would blunt the merged entity's incentive to continue to invest in expansion of advanced services. This result would be inconsistent with Congressional policy under section 706 and the Commission's policies implementing that section to encourage rapid and broad-based deployment of advanced services. Here, it is apparent that some competitors are simply trying to force Bell Atlantic/GTE to undertake the expense and inefficiencies of establishing a separate affiliate – which the competitors need not establish – then subject the affiliate to the telephone company's unbundling, pick and choose, and discounted resale requirements to make it non-competitive.

Finally, the equipment that will be transferred to the separate affiliate is not being used by the telephone companies to provide UNEs. Therefore, UNE unbundling obligations will not attach to such transfers, and MCI's concerns are moot.

Joint Marketing

CompTel asks the Commission to place limitations on "exclusive" joint marketing arrangements. CompTel at 5-6.

Response: The Commission addressed substantively identical joint marketing arrangements in connection with the SBC/Ameritech merger and found them reasonable. *See* SBC/Ameritech at & 468 ("[P]ermitting the SBC/Ameritech incumbent and its advanced services affiliate to engage in joint marketing activities will further the 1996 Act's objective of spurring rapid deployment of advanced services to consumers by facilitating the SBC/Ameritech

affiliate's and incumbent's ability to tailor the services offered in a manner that best suits the consumer's needs"). CompTel does not attempt to show any reason why that same holding does not apply equally here.

Operational Issues

Several CLECs ask Bell Atlantic/GTE to disclose full details of the separate affiliate's operations, including specific asset and personnel transfers, within ten days of closing. Inconsistently, the same parties ask that the Commission not proceed with this condition until it resolves pending rulemaking issues regarding the permitted scope of separation requirements between an incumbent telephone company and its advanced services affiliate. Joint Comments of BlueStar Communications, Inc., DSLNet, Inc., KMC Telecom, Inc., and MGC Communications, Inc. ("BlueStar") at 6-7.

Response: The proposed merger condition as written fully describes how the separate affiliate will operate and its relationship with the telephone company. The details of which specific personnel and assets will be transferred have yet to be worked out. The asset transfers cannot be finalized until applicable state commissions are consulted and give their consent to such transfers.[3] This is why the condition tracks the provision in the SBC/Ameritech merger conditions and gives Bell Atlantic/GTE six months to file for any needed state asset transfer approvals. The details of such asset transfers will be fully disclosed in state filings, where they are needed, and will be memorialized in written agreements that will be summarized in a public Internet posting. The suggestion that the Commission should wait to approve the condition until it has resolved all relevant rulemakings is merely a delaying tactic – there will always be some outstanding unresolved policy issues that a party can claim should cause the Commission to delay a decision on a specific application that it opposes. Here, if the Commission eventually adopts any applicable new rules addressing the provision of advanced services, Bell

[3] The specific personnel who are to be transferred to the affiliate are at Bell Atlantic/GTE's discretion, and there is no reason they should be subject to regulatory review.

Atlantic/GTE will, of course, abide by those rules prospectively. But there is no reason to delay this merger in the meantime. Moreover, the Commission already adopted a nearly identical separate advanced services affiliate condition in approving the SBC/Ameritech merger. The commenters have shown no reason why the separate affiliate condition proposed for Bell Atlantic/GTE's merger should be treated any differently.

Application of Future Laws and Regulations

Some parties express concern that the separate affiliate will not be subject to future laws or regulations governing provision of advanced services or interexchange services and argue that the Commission cannot and should not grant prospective blanket forbearance to the affiliate's operations. CompTel at 2-4, Covad at 11. Covad also argues that the language of the proposed conditions would be subservient to state certification. Covad at 11.

Response: Bell Atlantic and GTE are not seeking to be exempt from any applicable future laws or regulations. If Congress or the Commission adopts new prospective statutes, rules or policies governing provision of advanced services, Bell Atlantic/GTE will, of course, fully comply to the extent that they are applicable.[4] Any new laws or policies that govern provision of *interexchange* services, however, would not apply to the advanced services affiliate unless that affiliate provides interexchange service or is integrated into an interexchange affiliate. In that case, Bell Atlantic will comply with all applicable provisions of law.

As to state jurisdiction, language in the second paragraph of the proposed conditions makes clear:

> It is not the intent of these Conditions to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these Conditions, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these Conditions.

[4] The advanced services affiliate, as a non-dominant service provider, will be subject to any provisions that govern such providers, not those affecting incumbent local telephone companies.

And paragraph 3e of the proposed conditions makes asset transfers explicitly subject to any applicable state approvals.

DSLAMs In Remote Terminals

Some parties urge the Commission to require all competitors to be given access to DSLAMs placed in remote terminals, as a UNE, at TELRIC rates. They express concern that space constraints in such terminals will prevent competitors other than the advanced services affiliate from placing DSLAMs in the remote terminals, resulting in the affiliate becoming the only provider. Advanced Telecom Group ("ATG") at 7-10, CompTel at 5.

Response: The ownership of plug-in cards which contain DSLAM capabilities is being addressed in comments solicited in response to a letter dated February 16, 2000 from SBC to the Commission. *See Public Notice* DA 00-335, CC Docket No. 98-141, ASD File No. 99-49 (rel. Feb. 18, 2000). To the extent that the telephone company owns the DSLAMs, the issues raised will be resolved in that proceeding. To the extent that other carriers own the DSLAMs in the remote terminals, the separate affiliate requirement will help to ensure that non-affiliates have the same opportunity to locate their own devices in the remote terminals as the advanced services affiliate. As a result, contrary to the parties' claims, the affiliate will not become the sole provider of DSL services.

Equipment Ownership Issues

CompTel asks for clarification that the telephone company will not own advanced services equipment 30 days after merger closing. CompTel at 9.

Response: Equipment used to provide advanced services that is ordered 30 days after merger closing will be owned by the separate affiliate, which may lease it back to the telephone company during the transition period. Existing equipment that is being used to provide advanced services will be transferred to the separate affiliate upon receipt of any required state asset transfer approvals and pursuant to contracts that will be posted on the Internet. Because of the

need for a transition period, as specified in the proposed conditions, and for a number of states to approve the asset transfers, this process cannot be completed within 30 days.

Enforcement Issues

MCI asks the Commission to require regular reporting so that regulators will know what services the telephone company is providing to the separate affiliate. MCI at 8. It also asks that compliance audits be conducted quarterly. *Id*. at 19.

Response: Under the proposed conditions, all agreements between the telephone company and the separate advanced services affiliate must be either reduced to writing and posted publicly on the Internet or contained in a publicly-available interconnection agreement. As a result, additional reports or filings would be duplicative and serve no purpose other than to increase costs. MCI makes no effort to show why Internet posting and interconnection agreements will not provide all the information it or the Commission needs to determine the services the affiliate is receiving.

MCI's proposal for quarterly audits is preposterous, because each audit from start to completion will take nearly one year. As a result, even under the proposed conditions, there will be nearly continuous audits. Those audits will be conducted simultaneously with Commission audits on collocation and section 272 compliance, so there will be no dearth of audit data to confirm that Bell Atlantic/GTE is meeting all applicable requirements.

II. **Discounted Surrogate Line Sharing Charges**

Two parties argue that the separate affiliate should not be given line sharing until it is available to all competitors. MCI at 9, Northpoint at 4-5. Another group of carriers argues that, if interim line sharing is permitted, competitors should be given OSS discounts on all loops that CLECs use to provide advanced services, even if those loops are not subject to line sharing. BlueStar at 5-6, CoreComm at 31.

Response: The whole purpose of the surrogate discount is to provide other carriers with the functional equivalent of line sharing on applicable loops until actual line sharing is offered,

and the Commission has found it does just that in approving a similar provision for SBC/Ameritech. *See* SBC/Ameritech at & 478. In that case, the Commission had not yet adopted an order requiring actual line sharing, so it could not have been determined if or when SBC/Ameritech would be required to provide line sharing to all carriers. Here, the Commission has adopted a line sharing order, and the interim arrangement will be in effect for just a short time. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 and 96-98, FCC 99-355 (rel. Dec. 9, 1999).

And Bell Atlantic and GTE have already taken steps to implement line sharing in a timely manner. Bell Atlantic has initiated a pilot program as part of the DSL collaborative in New York, under the auspices of the New York Public Service Commission, to work with the CLECs to develop and test a line sharing configuration that meets the Commission's requirements. GTE has begun a similar pilot program in California. The results of these programs will provide both Bell Atlantic and GTE with the information needed to implement line sharing region-wide as required.

The only justification the commenters give for asking the Commission to create additional "surrogate" discounts is that such action would give Bell Atlantic/GTE an incentive to provide line sharing earlier. But, unlike the situation at the time of the SBC/Ameritech merger, Bell Atlantic/GTE are obligated to comply with an effective Commission order, and the Commission found in the case of SBC/Ameritech that the proposed discounts were a sufficient incentive even without that order.

V. **Carrier-to-Carrier Performance Plan**

Commenters raise a variety of arguments in conjunction with the proposed Carrier-to-Carrier Performance Plan, virtually all of which are based on a misreading of the Plan, or have

already been considered and rejected by the Commission in its review of the SBC/Ameritech merger conditions.

Structure of the Plan

AT&T claims that, unlike the SBC/Ameritech plan, the proposed Plan is "fixed and inalterable" and designed to become obsolete. AT&T at 29-30. AT&T and MCI both argue that the proposed Plan omits important metrics. *Id.* at 33-34; MCI at 17-18. MCI complains that the payment levels are too low and are capped, that remedies are applied quarterly, not monthly, that payments should be made to CLECs rather than to the United States Treasury, and that Bell Atlantic/GTE should be subject to payments immediately, rather than beginning 270 days after the merger closes. MCI at 16-18.

Response: AT&T's claim that the Bell Atlantic/GTE Plan fails to include the ability to revise the metrics is flat wrong. Not only does the Bell Atlantic/GTE Plan specifically provide that the new company and the Chief of the Common Carrier Bureau "shall jointly review the Bell Atlantic/GTE measurements on a semi-annual basis, to determine whether measurements should be added, deleted, or modified," Proposed Conditions, Attachment A, p. A-1, it also provides that Bell Atlantic/GTE will notify the Bureau Chief of changes to the design or calculation of the New York or California measurements and that such changes will be automatically incorporated into the Bell Atlantic/GTE Plan unless the Bureau Chief directs the company not to do so. *Id.* at A-1 through A-2.

The measurement categories and remedy structure proposed by Bell Atlantic/GTE are closely modeled on the performance plan adopted by the Commission as a condition of the SBC/Ameritech merger. Although the measurements are grouped into 17 categories (rather than 20, as in the SBC/Ameritech conditions) and the categories have different names, the measurement categories included in the Bell Atlantic/GTE Plan cover all of the performance

areas covered by the measurements in the SBC/Ameritech plan.[5] While AT&T and MCI complain that the Plan omits measurements contained in the New York and California plans, that is no different than the SBC/Ameritech plan, where the measures included in the merger conditions were based on, but did not include all of, the measures in the Texas or California plans. *See* SBC/Ameritech at ¶ 380. The Commission already has determined that the measurement categories in the SBC/Ameritech plan – and, therefore, in the Bell Atlantic/GTE Plan – "cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair associated with UNEs, interconnection, and resold services," and that reporting these measures will "ensur[e] that [the merged company's] service to telecommunications carriers will not deteriorate as a result of the merger and ... stimulate the merged entity to adopt 'best practices' that clearly favor public rather than private interests." SBC/Ameritech at ¶ 377.

Similarly, the per-occurrence payment levels are identical to those in the SBC/Ameritech plan, and the overall payment caps are higher than and proportional to the revised caps contained in the SBC/Ameritech plan. In addition, the Bell Atlantic/GTE Plan includes a "low-volume multiplier" modeled on the SBC/Ameritech conditions. Finally, the structure that requires

[5] MCI argues that the Bell Atlantic/GTE Plan should include a line sharing measure like the one it claims the California commission recently required GTE to incorporate or that this Commission included in the SBC/Ameritech merger conditions. MCI at 18. The SBC/Ameritech conditions did not originally include a line sharing measure, but they required that one be developed and implemented if the Commission required SBC/Ameritech to provide line sharing to unaffiliated providers of Advanced Services. SBC/Ameritech, Appendix C at ¶ 10. Contrary to MCI's assertion, there is not yet a final line sharing measure in California. Instead, the ALJ's draft proposal is still subject to comment in the collaborative proceedings there. In New York, Bell Atlantic is currently participating with CLECs in collaboratives that, among other things, are developing measurements related to DSL provisioning, including line sharing. As discussed above, the Bell Atlantic/GTE Proposed Conditions specifically provide for a semi-annual review of the performance plan to determine whether measurements should be added, deleted, or modified. That review, following development of an appropriate measure in collaboration with CLECs, would be an appropriate vehicle to add a line sharing measure to the Bell Atlantic/GTE Plan.

monthly reporting, payments after three consecutive months of below-standard performance, and payments for performance beginning 270 days after merger close, also mirrors the structure approved by the Commission in conjunction with the SBC/Ameritech merger. The Commission already therefore has found that this voluntary payment structure and cap are sufficient to address the purposes of the Carrier-to-Carrier Performance Plan. SBC/Ameritech at ¶ 378, n.706.

AT&T attempts to avoid the effect of the Commission's decision in the SBC/Ameritech merger by alleging that SBC has taken positions based on its merger conditions with which AT&T disagrees. *See e.g.*, AT&T at 34-36 and notes 29, 30. SBC's actions or inaction cannot be the basis for determining whether the conditions Bell Atlantic and GTE have proposed are effective in the context of the Bell Atlantic/GTE merger. As has already been explained, the circumstances of the Bell Atlantic/GTE merger warrant less onerous conditions than those imposed on SBC/Ameritech, not more.

Uniform Performance Plan

Several commenters argue that Bell Atlantic and GTE should be required to adopt a single performance measurement plan that would apply to both companies. BlueStar at 3, Indiana Commission at 11 ("Indiana Commission").

Response: Again, this aspect of the Bell Atlantic/GTE proposal is modeled after the SBC/Ameritech merger proposal. While the SBC plan was modeled on the Texas plan and collaborative results for Arkansas, Kansas, Missouri, Oklahoma and Texas, it adopted the rules developed in the California collaborative process for California and Nevada. SBC/Ameritech at ¶ 379 and Attachment C, ¶ 24. SBC also tailored its performance measurement plan to the former Ameritech states. SBC/Ameritech Attachment C at ¶ 24(c). Here, the Bell Atlantic/GTE Plan uses measurements from the same California collaboratives as the basis for reporting results

in the GTE states, and uses measurements developed in the New York collaboratives as the basis for reporting results in the Bell Atlantic states. Because both sets of measurements were developed in collaboration with CLECs operating in the respective territories, their use here makes sense. *See* SBC/Ameritech at ¶ 379. Indeed, even AT&T, which objects to many other aspects of the proposed Plan, appears to endorse this aspect. *See* AT&T at 34.

Relationship to State Performance Plans

Covad and Northpoint argue that any payments due to the United States Treasury under the Bell Atlantic/GTE Plan should not be offset by payments under state performance plans or CLEC interconnection agreements. Covad at 16; Northpoint at 11. Covad also argues that the merger performance plan should not "sunset" in a state upon grant of Section 271 authority in that state. *Id.* AT&T alleges that the Plan would effectively put a ceiling on state plans being developed. AT&T at 34-36. MCI complains that the Bell Atlantic/GTE Plan proposes weaker standards that those that have been established by various state commissions. MCI at 18. Finally, MCI argues that the Commission should make clear that this merger condition is not intended as an anti-backsliding measure in the Section 271 context, and that state performance plans developed in Section 271 proceedings serve a different purpose. *Id.* at 19.

Response: Both the sunset of the performance plan in any state where Bell Atlantic receives Section 271 authority, and the offset of amounts due to the United States Treasury by payments under state performance plans or CLEC interconnection agreements are modeled after the SBC/Ameritech conditions already adopted by the Commission. SBC/Ameritech, Appendix C at ¶ 24 and Attachment A at ¶ 12. The Commission's acceptance of these provisions makes good sense. The purpose of performance plans is to provide an incentive for Bell Atlantic/GTE (in this case) to maintain good performance for CLECs. Where (for example, in New York or California) a plan is in place that provides such incentives, piling more measures and more payments on top for the same performance is duplicative and wasteful. This would require the company to focus resources on tracking and reporting potentially conflicting or duplicative metrics rather than on actually providing service to CLECs. And, contrary to AT&T's fear, the

proposed Plan would not put a ceiling on state plans. Bell Atlantic and GTE have explicitly stated that the Plan "does not limit the authority of any state to adopt additional or different state performance monitoring requirements or associated remedies." Proposed Conditions at ¶ 16.

The very fact that Bell Atlantic/GTE have designed the performance plan to sunset in a particular state when Bell Atlantic receives Section 271 authority for that state demonstrates that the plan is not intended as an "anti-backsliding" plan for Section 271 purposes. *See* MCI at 19. Moreover, because the Bell Atlantic/GTE Plan and plans developed in the context of state Section 271 proceedings are designed for different purposes, the standards by which performance will be measured may vary. *See* MCI at 18. Finally, the fact that one state may have developed standards in the context of a Section 271 proceeding does not mean that those standards will be appropriate for other, different states in a plan designed for a different purpose.

VI. **Uniform and Enhanced OSS and Advanced Services OSS**

Uniform Interfaces

Several commenters assert that the Commission should require Bell Atlantic/GTE to implement uniform OSS interfaces not only within the former Bell Atlantic and GTE areas but across the new merged company. *See e.g.*, MCI at 10-12; RCN at 2, BlueStar at 14-16; Northpoint at 9-10; Covad at 13; Allegiance at 6-8. Some of these carriers argue that uniform interfaces should be implemented within 24 months of the merger closing date (rather than within 24 months of the collaboratives that will set the requirements for the interfaces), and MCI seeks clarification that existing timetables growing out of the Bell Atlantic/NYNEX merger will not be changed as a result of the Bell Atlantic/GTE merger. *See, e.g.*, BlueStar at 14-16; Covad at 14; Northpoint at 7-9; MCI at 12.

Response: Implementation of uniform interfaces and business rules through which CLECs would obtain access to OSS across the combined company may not be achievable in the next several years. Even if it were achievable, it would cost hundreds of millions of dollars, cause enormous disruption for the CLECs, and have only limited value.

Bell Atlantic and GTE do not share common histories from either a network or a systems perspective. Their respective OSS have been developed from significantly different sources and, as a result, the interfaces and business rules through which CLECs obtain access to those systems differ significantly. GTE did not participate in the Bell System network and systems development. Instead, GTE developed its own telecommunication equipment manufacturing capabilities and its own operating support systems, including the systems now used to perform pre-ordering, ordering, provisioning, maintenance/repair and billing functions.

Today, largely as a result of these different development histories, the network architectures of Bell Atlantic and GTE are significantly different. For example, the most widely deployed switch in GTE's local network today is not used anywhere in Bell Atlantic. Moreover, the network architectures are tightly linked to each company's respective OSS. Thus, 37% of GTE's network, the portion represented by the GTD5 switch, could not interact with or be supported by Bell Atlantic's network management systems and OSS without substantial re-programming efforts.

The existing interfaces that are provided to CLECs have been designed to work with the core retail systems of customer care, billing, and trouble management, and those systems are integrated with core provisioning systems that serve both retail and wholesale customers. These systems are intricately tied to business processes and practices that have grown up over many years, reflecting different local regulatory and business environments. As just one example, Bell Atlantic uses over 25,000 Uniform Service Order Codes (USOCs), for ordering both retail and wholesale services. GTE only uses USOCs within CABS for access services. For retail and wholesale services, GTE uses approximately 30,000 of its own service codes, called Item of Service Codes, which are fundamentally different service codes from USOCs.

The Bell Atlantic/GTE Proposed Conditions already would require the new company to spend tens of millions of dollars, among other things, to enhance uniformity within Bell Atlantic and GTE and introduce new functionality, including systems enhancements allowing GTE to produce bills for CLECs using the BOS format standard.[6] A requirement to implement common interfaces and business rules between the two companies, if achievable, would increase the amount of that expenditure to several hundred million dollars. This includes both the cost of developing common interfaces plus additional changes that would be required to move to common business rules. Business rules inform the CLECs what information is needed by Bell Atlantic's and GTE's internal systems and how it must be formatted in order to conduct the desired transaction. Therefore, changes to the business rules, in order to make them more common, require significant and fundamental changes to Bell Atlantic's and GTE's core systems and business practices (to recognize and respond to different information, or information in a different format, from the CLECs), substantial programming efforts (to "translate" some new or differently formatted information provided by CLECs into the information and formatting needed for the core systems and processes), and significant internal work to implement new business practices based on the changed information. All tolled, the effort to implement common interfaces and business rules between the two companies easily could cost nearly one-half billion dollars and take several years.

Moreover, the changes that would be required to move toward uniform interfaces and business rules would be disruptive to virtually all CLECs, while uniformity would have only

[6] Both companies currently provide ordering interfaces consistent with the industry standard Local Service Ordering Guidelines (LSOG). Bell Atlantic also supports LSOG for pre-ordering, and GTE will support industry standards for pre-ordering with its implementation of LSOG 4 in April.

limited value. As interfaces and business rules change to become more uniform, all CLECs would have to re-program their own systems and retrain their personnel. There are currently over 350 CLECs authorized to use Bell Atlantic's electronic interfaces to order unbundled elements or resold services. In December of 1999, there were 188 different CLECs that used at least one of GTE's electronic interfaces for ordering. Of these, only about 50 are doing business with both companies. In other words, about 485 different CLECs use electronic interfaces to order services from Bell Atlantic or GTE, but only 11% of the total operate in both companies' service areas. Eight out of nine CLECs operate in only one of the companies' service areas, yet all CLECs would be required to make changes in their own systems and operations to accommodate any changes designed to bring greater uniformity to Bell Atlantic's and GTE's interfaces.

Both AT&T and MCI argued to the California PUC that implementation of uniform interfaces would "ultimately hinder the efforts of AT&T, MCI, Sprint and other CLECs to compete against GTE in California when the CLECs are not able to access customer information or to exchange ordering and provisioning data." (AT&T/MCI Brief in Case No. A.98-12-005, filed August 27, 1999, at 36.) MCI submitted comments here arguing that the two companies should be required to implement uniform interfaces and business rules, and seeks to smooth over its inconsistent statements by arguing that "Bell Atlantic and GTE should manage the transition to uniform interfaces in a way that avoids disruption of existing interfaces." MCI at 11, n. 12. As MCI should know, that is not possible. The interfaces and business rules are different now. In order to make them uniform, either Bell Atlantic's existing interfaces and business rules, or GTE's existing interfaces and business rules, or both will have to change. Those changes will unavoidably cause all CLECs to make changes. If MCI is suggesting that Bell Atlantic and GTE

should support both existing and new interfaces and business rules simultaneously, that would not be possible either. Because, as described above, the interfaces and business rules are so tied to the existing core systems, the transition to common interfaces and business rules would require changes in the core systems to support the new business rules. At that point, the old business rules would no longer work with the core systems. MCI's suggestion would mean establishing duplicate systems, personnel, processes and practices to operate with both old and new interfaces and business rules during a "transition." This simply would not be feasible.[7]

Uniformity in Pennsylvania and Virginia Only

Allegiance and Z-Tel suggest that requiring Bell Atlantic and GTE to provide uniformity only within Pennsylvania and Virginia, where both companies have local service areas today, would be a more modest and achievable goal. Allegiance at 6-8; Z-Tel at 4.

Response: Since both GTE and Bell Atlantic are already working to ensure uniform interfaces and business rules within the GTE service areas, including Pennsylvania and Virginia, and uniform interfaces and business rules within the Bell Atlantic service areas, including Pennsylvania and Virginia, any changes by either company to make the two sets of interfaces and business rules uniform across service areas in Pennsylvania and Virginia necessarily would require changes to implement uniformity throughout both companies. In other words,

[7] MCI asks the Commission to clarify that nothing in Bell Atlantic's/GTE's proposed conditions excuses or modifies the obligations with respect to uniform interfaces established in the *Bell Atlantic/NYNEX Order* or the complaint proceeding referenced in paragraph 19 of the proposed conditions. MCI at 12. That clarification is already explicit in the proposed conditions. *See* paragraph 19: "For those OSS interfaces and business rule changes for which collaborative proceedings have been conducted, these changes will be implemented under the schedules adopted in these proceedings."

implementing uniform interfaces and business rules within Pennsylvania and Virginia would require implementing uniform interfaces and business rules across the two companies.[8]

Alternatively, the companies might convert all of GTE's end user customer accounts in Pennsylvania and Virginia to Bell Atlantic systems, and use Bell Atlantic's OSS to serve those customers in the future. While this would provide uniformity within Pennsylvania and Virginia, it would mean that access to OSS in GTE's service areas in those states would no longer be uniform with access to OSS in other GTE service areas. Moreover, GTE and Bell Atlantic estimate that converting GTE's customers to Bell Atlantic systems could cost hundreds of millions of dollars with little benefit given the very limited number of CLECs that operate in both the GTE and Bell Atlantic service areas in either Virginia or Pennsylvania.[9] In fact, for many of the reasons discussed above and in the previous response, Bell Atlantic and GTE do not plan to combine the two companies' retail businesses at the operational level in Pennsylvania and Virginia.

Charges for OSS

A group of commenters argues that Bell Atlantic/GTE should agree to waive charges for obtaining access to their OSS in order to spur competition. National ALEC Association at 7-8 ("National ALEC").

Response: The Act provides that rates for access to unbundled network elements (which, under the Commission's rules, includes access to OSS) "shall be . . . based on cost." 47 U.S.C. §

[8] As noted above, the changes required to present a common "look and feel" to CLECs go well beyond implementing new interfaces, and also require significant programming and changes in Bell Atlantic's and GTE's back-end systems and processes.

[9] Recent records show that no CLECs are currently purchasing UNEs from both Bell Atlantic and GTE in Pennsylvania and only two CLECs purchase UNEs from both companies in Virginia. Only four CLECs purchase resold services from both companies in Pennsylvania and only four CLECs purchase resold services from both companies in Virginia.

252(d)(1). There is no requirement that incumbent carriers subsidize their competitors, and for good reason – any "competition" based on such a subsidy would not be efficient, and is not the sort that Congress intended to encourage.

Third Party OSS Tests

CoreComm and RCN assert that GTE's OSS and interfaces should be subjected to third party testing, as Bell Atlantic's OSS and interfaces were in New York. CoreComm at 37; RCN at 2-3.

Response: The Commission has determined that a Bell company may use third-party testing to demonstrate, in the absence of commercial usage, that its OSS (and the interfaces through which CLECs obtain access to the OSS) meets the requirements of the competitive checklist in Section 271(c)(2)(B). *See NY 271 Order*, ¶ 89 (*citing Ameritech Michigan Order*, ¶ 138). GTE and the other independent telephone companies are not Bell companies, and Section 271 does not apply to them. There is no reason to single out GTE and subject it to requirements that Congress never intended.

Change Management Process

MCI argues that Bell Atlantic/GTE should implement the region-wide Change Management Process within 30 days, rather than 12 months as proposed. MCI at 12-13.

Response: The Change Management Process, as it currently exists in Bell Atlantic, has developed over time. GTE is now implementing a somewhat different Change Management Process as required by the California commission. Significant organizational efforts are required with CLECs in different regions throughout the country to implement a meaningful and consistent process. Moreover, the purpose of change management is to deal with the specific interfaces, business rules, and functionality of each company. Rushing to create a region-wide change management process in 30 days would provide no benefit to CLECs, since the interfaces

and business rules differ and any changes to them would apply only to the CLECs doing business with that company.

VII. OSS Assistance to Qualifying CLECs

A group of carriers assert that the Commission should require Bell Atlantic/GTE to offer OSS assistance to qualifying CLECs 30, rather than 90, days after the merger closing date. They further argue that, in order to qualify, CLECs should only have to complete training required by their interconnection agreements, rather than all available training offered by Bell Atlantic/GTE. BlueStar at 13-14.

Response: Both Bell Atlantic and GTE already offer extensive OSS training to CLECs, and routinely add new classes and subjects to the available training in response to CLEC requests. It makes no sense to require Bell Atlantic/GTE to send a specialized team to a CLEC to provide assistance that substantially duplicates training already available, merely because the CLEC's interconnection agreement did not anticipate and list all of the training subject matter offered by Bell Atlantic/GTE.

In addition, because Bell Atlantic's and GTE's training schedule must be set in advance, the companies need 90 days from the merger closing date to assemble the dedicated teams required by the proposed condition, while ensuring that all previously scheduled training classes remain adequately staffed.

VIII. Collocation Compliance

A group of carriers assert that the Commission should require Bell Atlantic/GTE to submit an attestation report showing compliance with the Commission's collocation orders within 10 days after closing (as was the case with SBC/Ameritech) rather than 180 days as provided in the proposed condition. They ask the Commission to initiate an investigation as to why Bell Atlantic and GTE cannot make the certification immediately after closing and ask that GTE be required to adopt Bell Atlantic's best practices in providing collocation. BlueStar at 4.

Response: Bell Atlantic and GTE are fully complying with the Commission's collocation rules and will continue to comply. Unlike SBC/Ameritech, however, the GTE local telephone

operations are widely scattered amount a number of states. The detailed procedures of Bell Atlantic and the various GTE companies' areas differ in sufficient detail that more time is needed to adopt a compliance plan for submission to the auditor. For this reason, Bell Atlantic/GTE require additional time to develop such a plan and submit it to an auditor for an attestation report.

IX. **MFN Provisions for Out-of-Region and In-Region Arrangements**

Several parties argue that competing carriers should be permitted to opt into not just voluntarily negotiated provisions in interconnection agreements but arbitrated provisions as well. ATG at 3-4, AT&T at 34-35, BlueStar at 10, Covad at 17-18, MCI at 14, CompTel at 7. They also argue that competitors should be able to adopt tariff arrangements from other states and should not be required to subscribe to "extraneous" conditions in order to obtain the provisions they want, even if those conditions are necessarily interrelated. ATG at 3-5, MCI at 15. Some parties also ask that Bell Atlantic and GTE be required to post all effective and new agreements on their website, with notations as to whether each provision was negotiated or arbitrated. BlueStar at 11, CoreComm at 46. Others want the merged company to be bound by agreements negotiated pre-merger, Covad at 17, MCI at 14, and to extend the "most favored nation" provisions to cover performance measures and standards. Northpoint at 12. The Commission should, one party claims, adopt a series of expedited procedural dates for obtaining access to services under this condition, ATG at 5-6, and delete the provision allowing Bell Atlantic and GTE to modify agreements to reflect differences caused by differing state regulations, product definitions, network equipment, facilities and provisioning, and collective bargaining agreements. MCI at 15. Finally, one party expresses concern that Bell Atlantic/GTE will claim that an agreement that becomes effective by operation of law under section 252(e)(4) (i.e., because of state inaction during the 90 days after it is filed) is not state-approved and will not allow other carriers to opt into it under this section. CompTel at 8-9.

Response: Nearly all of the arguments raised on this condition have been addressed and rejected in connection with the SBC/Ameritech merger, and the parties have given no valid reason for the Commission to change its earlier rulings. For example, the Commission rejected claims that carriers in one state should be permitted to adopt provisions that are arbitrated in another state, "because doing so might interfere with the state arbitration process under sections 251 and 252 of the Communications Act." SBC/Ameritech at & 491. This is because one state, by adopting an interconnection provision, "could effectively interpret the merged firm's

obligations under sections 251 and 252 for all other states." *Id*. This would amount to preemption by one state of the statutory authority over interconnection agreements of all other states.

The parties claim, however, that SBC/Ameritech has, post-merger, limited the issues on which they will voluntarily agree and, instead, has forced most issues to go to arbitration. Whatever the merits of the commenters' factual claims, extending the region-wide application to arbitrated provisions, besides undermining state authority, as the Commission accurately found, would simply exacerbate the supposed problem. Knowing that arbitrated provisions will apply region-wide is likely to harden the parties' litigation posture, making settlements less likely, and result in extensive regulatory and judicial litigation.

The Commission also properly rejected retroactive application of this condition to SBC in regard to terms that Ameritech had negotiated and agreed to before the merger. There, SBC was acquiring Ameritech, and the Commission found that SBC should not be bound by agreements that had been negotiated by the acquired company, Ameritech, at a time when SBC had no say over what terms were agreed to. By contrast, the Bell Atlantic/GTE merger is a merger of equals – neither company will simply absorb the other – with a new company emerging. Applying the same principle as was followed in SBC to these very different circumstances, neither Bell Atlantic nor GTE should be bound by terms agreed to in one another's regions at a time when they had no say over those terms. Application on only a going-forward basis will place the merged company "on notice as to which systems and procedures could become uniform across its region." SBC/Ameritech at & 492.

In the case of SBC/Ameritech, the Commission also concurred with the provision allowing agreements negotiated in one state to be subject to modification in another state based

on differences in the technology that has been deployed or differences in state laws or regulations. Given that states have jurisdiction over interconnection agreements, the Commission properly found that "the relevant state commission can ascertain what is possible in light of state law and the technical capability of SBC/Ameritech's systems within that state." *Id*.

The Commission should likewise reject the parties' claims that carriers should be allowed to pick and choose among necessarily interrelated provisions of an interconnection agreement. Allowing a carrier to opt into only one of two or more interrelated provisions could force Bell Atlantic/GTE to provide a technically infeasible capability or one that does not exist in the network, in contravention of section 251(c). Indeed, the Commission and the Supreme Court have confirmed that provisions of interconnection agreements that are "legitimately related" should be read as one and are not subject to the "pick and choose" provisions of section 252(i). *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC 15499, & 1315 (1996); *See, e.g., AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 738 (1999).

As for other claims relating to this condition, there is no justification for requiring Bell Atlantic/GTE to post their interconnection agreements on the Internet. Interconnection agreements are publicly available in each state, in the manner provided under state regulation, and no party has alleged that it has any difficulty obtaining access to such agreements. Additionally, while tariffed arrangements in any state are available to all qualified customers in that state, it would undermine state authority to automatically extend a tariffed service from one state to every other state without review by each state commission. Finally, an agreement that becomes effective because of state inaction is "deemed approved" under the Act, and Bell Atlantic/GTE would treat it just like any affirmatively approved agreement.

The Commission should not adopt specific schedules for obtaining access to services under the "most favored nation" provisions. There were no such schedules in the SBC/Ameritech conditions and there is no reason to include them here. Besides, as a result of differences in the configuration of individual offices and the equipment already deployed, the time needed to meet a particular request can vary widely, and a "one size fits all" schedule would be unworkable on a nationwide basis.

Performance measures should not be subject to the most favored nation provisions, because doing so would undermine state authority. Bell Atlantic/GTE has offered comprehensive carrier-to-carrier performance plans as part of the merger conditions. Beyond this level, many states have adopted, or are in the process of adopting, performance measures that are unique to the regulatory environment in that state, including the particular systems, processes and service provisioning systems already implemented in that state. The performance measures that are integral to these systems will simply have no applicability in states with different systems, and it would make no sense to require them to apply region-wide.

XII. **Access to Cabling in Multi-Unit Properties**

Covad asks the Commission to require Bell Atlantic and GTE to adopt the testing and timeline deployments in the SBC/Ameritech Order to ensure Bell Atlantic/GTE provide competitors with access to cabling in multi-unit properties. Covad at 19.

Response: The only SBC/Ameritech provisions that are proposed to be deleted are the time lines for initiation and conduct of the trial. Bell Atlantic initiated a trial earlier this year in New York City allowing a CLEC to install cross-connects to house and riser cable, so those provisions are not required. Moreover, Bell Atlantic has an existing service in New York, and has a tariff pending in Massachusetts, that give CLECs access to such cabling. As specified by

the proposed condition, Bell Atlantic/GTE will take the needed steps to expand such access elsewhere.

XIII. **Out-of-Territory Competitive Entry**

Size and Technology of the Out-of-Region Commitment

Two parties claim the out-of-territory commitment made by Bell Atlantic/GTE is inadequate because it does not exactly mirror SBC/Ameritech's commitment. These parties object to the dollar amount pledged by Bell Atlantic/GTE to providing services outside its service area and the fact that this pledge does not specify the technologies in which the combined company will invest. AT&T at 29; Indiana Commission at 11-12.

Response: Bell Atlantic/GTE's proposed out-of-territory commitment – to spend $500 million or sell competitive services to 250,000 customers – is larger than the commitment made by SBC/Ameritech, which provided for only 90 customers spread over 30 markets. The capital investment needed to meet SBC/Ameritech's commitment is just over $200 million.[10] Indeed, several commenters commend Bell Atlantic/GTE on their out-of-territory commitment because it will, for example, create jobs, reduce prices through increased competition, and lead to facilities-based competition. *See* World Institute on Disability at 6-7; Labor Council for Latin American Advancement at 2.

Bell Atlantic and GTE have already demonstrated their commitment to competing nationwide, having invested *billions* of dollars toward that end. For example, GTE has invested more than $200 million into systems needed to provide competitive local services in 17 cities in 9 states outside the Bell Atlantic/GTE footprint. Bell Atlantic has invested $700 million in equity in Metromedia Fiber Network, Inc., a firm that constructs and operates optical fiber facilities for local exchange carriers, and committed to lease $550 million in dark fiber from that

[10] This is based on the estimated cost to build, acquire, or resell the infrastructure needed to serve the requisite number of customers in each of 30 markets.

company. And the companies are investing billions in nationwide wireless businesses, including the joint venture with Vodaphone AirTouch, which will enable them to serve more than 90 percent of U.S. population and in 49 of the top 50 U.S. wireless markets.

Criticisms regarding the "technology neutral" aspect of the commitment – primarily leveled by AT&T – ring hollow. Bell Atlantic/GTE wants to be able to invest in the newest technologies available to compete in the local market and provide innovative services and options to its new customers. AT&T, with its investments in TCI and Media One and testing of wireless local loop alternatives, clearly recognizes the need to use different technologies to provide telephone and other services and should recognize that its competitors will be doing this as well. Similarly, MCI and Sprint, who have proposed their own merger, plan to use MMDS systems to provide customers with two-way Internet and two-way voice services. Sprint already uses an ATM platform and DSL-like services in conjunction with its long distance network and switches as the platform for its much-touted ION service. In addition, companies such as Winstar and Teligent are using wireless technologies to provide local services in competition with traditional wireline local services. Bell Atlantic/GTE should have the flexibility to meet its out-of-region commitment through wireless as well as wireline services that compete in the local market. In fact, other commenters noted the benefits of a technology-neutral approach, and the Commission should disregard AT&T's contrary claims. *See, e.g.*, Labor Council for Latin American Advancement at 2.

Services Included in the Out-of-Region Commitment

The Indiana Commission urges the Commission to require that one-half of the $500 million expenditure be invested in "local" as opposed to "advanced" services. Indiana Commission at 11-12.

Response: Bell Atlantic/GTE has committed to use its out-of-region investment "to provide services, including resale, that compete with traditional telephone services offered by

incumbent local exchange carriers or to provide Advanced Services to the mass market." Proposed Conditions at & 39. Assuming that, by "local," the Indiana Commission means traditional voice services, its argument is contrary to Congressional and Commission policy. Indeed, section 706 of the 1996 Act requires the Commission to encourage widespread deployment of advanced services nationwide. If it finds that advanced telecommunications capability is not being deployed in a reasonable and timely manner, Congress requires the Commission to "take immediate action to accelerate deployment of such capability." Section 706(b). In furtherance of this national policy, the Commission is gathering information to ensure that advanced services are being deployed broadly, or what remedies might be needed if they are not, and any restriction on use of the out-of-region investment for this purpose could run counter to public policy. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Notice of Inquiry*, CC Docket No. 98-146, FCC 00-57 (rel. Feb. 18, 2000). And one of the grounds on which the Commission recently approved US WEST's merger with Qwest Communications was that it promotes the deployment of advanced services, consistent with section 706. *Qwest Communications International Inc. and US WEST, Inc.*, CC Docket No. 99-272, FCC 00-91, & 60 (rel. March 10, 2000). The Indiana Commission's desire to limit Bell Atlantic/GTE's investment to traditional voice, rather than advanced, services is also inconsistent with its separate, unjustified claim that GTE is not providing advanced services quickly enough in its incumbent local service areas in Indiana. Indiana Commission at 13-14.

XIV. **InterLATA Services Pricing**

The Indiana Commission and the Texas Office of Public Counsel urge the Commission to require GTE to eliminate its mandatory minimum fee for interLATA service. Indiana Commission at 12; Texas Office of Public Counsel at 3-4. The Texas Office of Public Counsel also seeks an explanation for why only Virginia and Pennsylvania are included in GTE's commitment to eliminate minimum fees. Texas Office of Public Counsel at 4-5.

Response: The short answer to the parties comments is that GTE *will* eliminate its mandatory minimum fees for low-volume residential customers as soon as the market leader does the same. As a competitive long distance provider, GTE's offerings and prices are constrained by the market leader – AT&T. And AT&T has recently committed to eliminate the minimum usage requirement on its basic schedule for five years, effective July 1, 2000, if the Commission adopts a pending coalition access reform proposal and certain other conditions are met. *See ex parte* letter in CC Docket Nos. 94-1, 96-45, 99-249, and 96-262, dated February 25, 2000, from Joel E. Lubin, AT&T. GTE will change its price structure for low-volume callers when AT&T meets its commitment.

The reason SBC/Ameritech was able to agree not to impose a mandatory minimum monthly fee for long distance services is because it is not yet in the long distance market. GTE has been in the long distance market since 1996 and would have to revise its pricing structure in order to eliminate monthly charges. But if GTE were to eliminate its monthly minimum charge without similar action from its competitors, GTE would attract large numbers of very low (or zero) volume customers and incur the expenses of servicing those accounts, including billing expenses, with little or no revenue. If all major long distance carriers eliminated their minimum fees, the expenses of servicing those accounts would be spread among all such carriers and not fall disproportionately on GTE.

Pennsylvania and Virginia are treated differently in the proposed conditions because, due to interLATA restrictions on Bell Atlantic, GTE has taken steps to divest its long distance customers in those states prior to the merger closing. After the merger, GTE will no longer have

any long distance customers in Pennsylvania and Virginia. When Bell Atlantic/GTE obtains interexchange authority in these states, Bell Atlantic/GTE has committed not to assess minimum usage charges for residence customers.[11]

XV. **Enhanced Lifeline Plans**

A coalition of state consumer advocates asks the Commission to add new eligibility requirements for lifeline service, to allow lifeline customers to purchase optional services without losing their eligibility for lifeline assistance, and to confirm that the condition would not reduce benefits received under existing state plans. *See* Comments of State Advocates Regarding the Lifeline Plan Proposed as a Merger Condition.

Response: The Commission reviewed a substantively identical proposed condition in approving the SBC/Ameritech application and "reject[ed] the requests of some commenters that we impose additional requirements on SBC/Ameritech's offer of enhanced Lifeline plans." SBC/Ameritech at & 502. The consumer advocates have shown no differences here that would warrant a different finding. With or without this condition, states will continue to have the right to establish eligibility requirements for lifeline service as well as determine whether lifeline customers are eligible to subscribe to optional services. Under the proposed condition, Bell Atlantic/GTE must in a filing with each state commission either propose a new plan that meets the requirements of the condition, propose amendments to the state's existing plan, or certify that the existing state plan meets the condition. That filing in no way binds the state commission to make any changes to its existing lifeline plan. As a result, adoption of this condition would not require any state to reduce or modify existing lifeline benefits that exceed those in the proposed condition.

[11] This tracks Bell Atlantic's current long distance pricing in New York, where it does not impose a minimum usage charge for residence customers.

In addition, the Commission has adopted rules governing eligibility requirements for lifeline assistance for those states that have not set their own eligibility criteria. Those rules provide that such eligibility should be based on participation in one or more specified low-income assistance programs, not on the additional qualification provisions the consumer advocates propose.[12] As a result, as a matter of policy, the Commission has already found the existing criteria to be appropriate, and there is no reason to add to them here.

XX. **Enforcement**

Northpoint asks the Commission to delete the provision in paragraph 23 of the proposed conditions that provides an offset for penalties paid for non-compliance if Bell Atlantic/GTE are required to make payments under state requirements or under any agreements with CLECs. It also objects to language in paragraph 21 that payments should be "up to" $10,000 per day for failure to comply on the basis that such a limitation injects unnecessary ambiguity. Finally, it seeks to transfer all of the obligations under the merger conditions into future Bell Atlantic long distance applications by making them part of the public interest analysis. Northpoint at 10-11. CoreComm wants an unspecified set of stricter conditions imposed on GTE to offset the lack of a section 271 inducement to comply. CoreComm at 25.

Response: Not allowing an offset for any penalties could subject Bell Atlantic/GTE to double- and triple-jeopardy for the same failure and is simply a bald attempt to increase the already-substantial potential liability. Other than simply arguing that more is better, Northpoint gives no reason why a payment of $10,000 per day per state is not a sufficient incentive to comply with the conditions. Requiring the same payment for any violation, no matter how insignificant, would not allow the punishment to fit the crime. Specifying that the penalty may be "up to" $10,000 is a recognition that some violations will have little effect on competition and simply do not warrant as stiff a penalty. There is also no reason to automatically make future

[12] Those programs are "Medicaid; food stamps; supplemental security income; federal public housing assistance; or Low-Income Home Energy Assistance Program." 47 C.F.R. э 54.400(a). All of these programs are included in the eligibility criteria in the proposed merger condition.

interexchange service applications subject to every merger condition proposed here, as Northpoint proposes. Many of these conditions have no relevance to whether Bell Atlantic has met the statutory requirements for entry into long distance, and there is no reason why such irrelevant conditions should be applied. As to imposing additional conditions on GTE, the conditions here contain such substantial voluntary payment, audit, and enforcement provisions that no additional inducement is needed to comply.

Miscellaneous Comments

Appellate Rights

Covad expresses concern that Bell Atlantic's and GTE's addition of the following language may support an argument that the conditions are superseded by the Act, so as to negate the conditions in the event of a conflict: "Nor do the Conditions reflect or constitute any determination or standard regarding Bell Atlantic/GTE's compliance or non-compliance with 47 U.S.C. §§ 251, 252, 271, or 272 or limit in any way the legal rights of Bell Atlantic/GTE with respect thereto." Covad at 6.

Response: This concern is unfounded. The language Bell Atlantic and GTE have added ensures that the conditions are not misconstrued as a limitation on the right of Bell Atlantic/GTE to ask for reconsideration or to appeal any decisions of the Commission or state public utility commissions. Bell Atlantic/GTE will be obligated to comply with the conditions as approved. In addition, the company will be obligated to comply with effective Commission orders interpreting sections 251, 252, 271, and 272 of the Act, but there is no reason to preclude any party from challenging such orders in the proper forum.

Affiliate Language

Covad also asks the Commission to eliminate from the end of the list of Bell Atlantic and GTE companies the phrase "and that is an affiliate of Bell Atlantic/GTE." It claims that this language in some unspecified way constructs a loophole to allow Bell Atlantic/GTE to structure its operations to avoid affiliate status. Covad at 6.

Response: Bell Atlantic and GTE have included the additional qualification that the company be an affiliate of Bell Atlantic/GTE because GTE is in the process of selling some of its local exchange properties. Once neither Bell Atlantic nor GTE owns these properties, they should not be subject to conditions agreed to by Bell Atlantic and GTE. This is not a loophole but a practicality to ensure that the merger conditions are not extended to non-affiliated purchasers of the properties.

Scope of "GTE States"

The Commonwealth of the Northern Mariana Islands urges the Commission to deny the merger application because, as a result of the exclusion of the Northern Mariana Islands from the definition of "GTE States," several of the conditions may not apply to the Northern Mariana Islands. Commonwealth of the Northern Mariana Islands at 1-7.

Response: The Northern Mariana Islands' principal concern is that Bell Atlantic/GTE will not extend its enhanced lifeline service commitment to residents of the Commonwealth. This is not the case. Bell Atlantic/GTE will offer residents of the Northern Mariana Islands the enhanced lifeline service program as stated in the conditions. In addition, there will be no change in the current reports and information that is already being provided to the Commission about GTE's operations in the Northern Mariana Islands. Therefore, there is no reason to include the Northern Mariana Islands as a "GTE state."

Other Proposed Conditions

Several parties ask the Commission to impose conditions in addition to those that Bell Atlantic and GTE proposed. These parties make no attempt to show how their "wish list" has any relevance whatever to the Commission's determination of whether the proposed merger will serve the public interest. Instead, they are simply attempts to litigate collaterally issues that are

for the most part properly raised in state proceedings and are entirely unrelated to this application. Their proposed conditions should be denied.

Reciprocal Compensation

Focal asks the Commission to require Bell Atlantic/GTE to pay "reciprocal compensation" in connection with Internet-bound traffic in those jurisdictions where they have been ordered to do so. Focal at 1, 6.

Response: No such condition is needed, because Bell Atlantic and GTE are paying compensation to other local carriers in every jurisdiction in which the state has ordered such compensation, at the negotiated rate or the rate established by the state commission. Focal, among others, has attempted to charge Bell Atlantic at a higher rate and for millions of minutes more than Bell Atlantic sent them, continues to bill Bell Atlantic for Internet traffic that the state commission has stated should not be subject to reciprocal compensation, and in at least one state (Maryland), continues to bill at a rate that is no longer in effect. Bell Atlantic, of course, is not paying these erroneous and excessive claims. Moreover, the Commission has held that issues involving compensation for Internet-bound traffic are to be adjudicated at the state level, pending a decision in an ongoing rulemaking. *Inter-Carrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689, & 26 (1999).

UNE Template

Several parties argue that Bell Atlantic and GTE should be required to provide a "template," or proposed terms and conditions, for the new UNEs that the Commission required incumbents to make available on May 17, 2000 pursuant to the UNE Remand Order. BlueStar at 8 n.6, 8-9 n. 7; CoreComm at 44 and n.115; Covad at 4. CoreComm asserts that, without such a template, competitive local exchange carriers will not be able to begin negotiating agreements to purchase such UNEs by the May 17 deadline and asks the Commission to include a condition requiring Bell Atlantic/GTE to provide a UNE template as early as March 17, 2000. CoreComm at 44-45.

Response: Whether or not Bell Atlantic and GTE provide a "UNE template" under the UNE Remand Order has no relevance whatever to whether the merger of the two companies is in the public interest, and CoreComm's request should be disregarded. In any event, the Commission allowed 120 days for the local exchange carriers to begin offering these new UNEs,

because it understood that it takes time to develop a new offering, especially where all of the parameters of the service have not yet been defined. And prices for new UNEs such as unbundled access to subloops and inside wire cannot be developed until the UNEs are defined. As soon as Bell Atlantic and GTE have defined the terms and conditions of the new UNEs, together with proposed rates, they will publish the template on their websites so that interested carriers can begin negotiating agreements to obtain these offerings.

Unbundling Advanced Services, Voice Services, and Internet Services

MCI wants a condition that would require Bell Atlantic/GTE to provide advanced services to customers who purchase voice or Internet services from competitors. MCI at 20-21.

Response: MCI cites no provision of the Act or any Commission rule or order to support its claim that Bell Atlantic/GTE is required to provide DSL service to subscribers to another carrier's local voice service, because none exists. The Commission's Line Sharing order addresses the requirement that Bell Atlantic and GTE give other carriers – in this case both the advanced services affiliate and non-affiliated providers – access to the data portion of their voice line, and Bell Atlantic and GTE will fully comply with that order. Nothing in that order – or any other order – obligates Bell Atlantic/GTE to provide DSL to end users of another carrier's voice service, and there is no reason to impose a condition to that effect. This is particularly the case here, when the separate affiliate will be the provider of the xDSL service to the public.

As for Internet service, DSL service is available to any Internet service provider – affiliated and non-affiliated – that wishes to resell it along with Internet access. Therefore, Bell Atlantic and GTE are by no means tying their DSL offering to provision of their own Internet service, as MCI claims. In addition, this proposed condition is simply an attempted end run around the New York Public Service Commission, where MCI has raised the identical issue in CASE 98-C-1357. There is simply no issue that warrants imposing an additional condition.

Prepaid Reseller Services and Conditions

A group of prepaid resellers asks the Commission to require Bell Atlantic/GTE to offer a variety of new local services. *See* National ALEC at 9-14. They also ask for larger reseller discounts for resold residential lines, *id*. at 6-7, and the right to resell voice mail services. *Id*. at 14.

Response: The services requested here are ones that Bell Atlantic and GTE do not offer at retail to end users and capabilities that have not been installed in the network. Under the Act, incumbent local exchange carriers are obligated to provide to other carriers only services and capabilities that already exist in the network. *See* 47 U.S.C. ∋ 251(c)(3) and (4). When the prepaid resellers asked Bell Atlantic to provide these services, Bell Atlantic did not simply deny the request.[13] Instead, it offered to provide many of the requested services, so long as the customers pay the cost to Bell Atlantic of obtaining the needed equipment and software. The resellers rejected this offer and instead demanded that Bell Atlantic subsidize provision of those services by paying the up-front cost.

Regarding additional resale discounts for residential lines, the resellers have made no attempt to show that the present discount does not properly reflect the avoided costs of providing the residential lines at wholesale, as required under section 252(d)(3). Moreover, any such showing would need to be made to the state commissions, as provided under section 252(d)(3), not as part of this unrelated proceeding. The Commission should not impose a condition that is clearly inconsistent with the requirements and standards in the Act.

Finally, while carriers may voluntarily choose to resell their voice mail services, there is no legal or policy reason requiring them to do so, as the Commission has already found. *See Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long*

[13] All of the specific allegations in the filing relate to Bell Atlantic, not GTE.

Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd 20599, & 314 (1998) ("[V]oice messaging services are not subject to the resale provisions of checklist item (xiv) because they are not telecommunications services"). Likewise, as an information service, voice mail is not subject to the resale provisions of the Act, which apply only to telecommunications services. *See* 47 U.S.C. §§ 251(b)(1) and (c)(4).